

KEVIN S. TURNER,)
)
Plaintiff,)
)
vs.) Case No. 1:15-cv-00108-TWP-MPB
)
T. RECTOR, *Sergeant, in his Individual and*)
Official Capacities.)
)
Defendant.)

This matter is before the Court on Plaintiff's Motion requesting "immediate financial penalty for the intentional destruction of evidence" [dkt. 44]. Plaintiff alleges that he was assaulted by Defendant on December 18, 2014 and that a video recording of the incident existed. The record reflects that no video evidence is currently available depicting the plaintiff's cell or the hallway outside the cell on December 18, 2014. Thus no video can be produced. Based on the current status of the record, the Motion must be **denied**.

However, if Plaintiff can show that the Defendant was responsible for the destruction of video evidence depicting the events in question, he may be entitled to an adverse inference. This standard has not yet been met. *See Miksis v. Howard*, 106 F.3d 754, 762-763 (7th Cir. 1997) (party seeking adverse inference must prove that other party intentionally destroyed evidence in bad faith). The Seventh Circuit “requires a showing of an intentional act by the party in possession of the allegedly lost or destroyed evidence” to support a missing or destroyed evidence instruction. *Spesco, Inc. v. General Elec. Co.*, 719 F.2d 233, 239 (7th Cir. 1983); *see also Adkins v. Mid-*

America Growers, Inc., 141 F.R.D. 466, 473 (N.D. Ill. 1992) (“In cases where evidence has been intentionally destroyed, it may be presumed that the materials were relevant.”).

IT IS SO ORDERED.

Date: 4/21/2016

A handwritten signature in black ink, reading "Tanya Walton Pratt", written over a horizontal line.

TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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